

MULTIMEDIA



UNIVERSITY

STUDENT ID NO

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MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 2, 2021/2022

UCP4622 – CRIMINAL PROCEDURE II

(All sections / Groups)

30 APRIL 2022

Reading Time: 9.00am – 9.15am

(15 Minutes)

Answering Time: 9.15am – 12.15pm

(3 Hours)

INSTRUCTIONS TO STUDENTS

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.
2. This Question paper consists of 4 pages with 5 Questions only.
3. Attempt **FOUR** out of **FIVE** questions. All questions carry equal marks and the distribution of the marks for each question is given.
4. Students are only allowed to bring in CLEAN AND ORIGINAL COPY of the following statutes into the exam venue :
 - i. Criminal Procedure Code (Act 593)
 - ii. Courts of Judicature Act 1964
 - iii. Evidence Act 1950 (Act 56)“Clean” is defined to include no tagging, no annotation either by the publisher or anyone else, and no erased marking. Highlighting and underlining are also prohibited.
5. Please write all your answers in the Answer Booklet provided.

PART A**ANSWER ALL QUESTIONS****QUESTION 1**

Jahat, a 28-year-old man had three (3) charged at the Session's Court with the offence of cheating Baik, Mangsa and Pandai under s.420 of the Penal Code.

After the charge was read and explained, Jahat was asked to enter his plea. Jahat pleaded not guilty because he did not bring enough money to pay the fine. He also claimed that he was slapped with the summons due to his refusal to give 'tea money' to one of the police officer who inspected his car. The Judge however rejected Jahat's plea of not guilty on the ground that the plea was frivolous and vexatious. The Judge recorded a plea of guilty and proceeded with the Deputy Public Prosecutor ('DPP') tendering the facts of the case. Jahat insisted that he was innocent and refused to admit the facts of the case. The Judge therefore had to record a plea of not guilty and fixed the case for case management

As the case failed to be disposed during the case management, the Judge fixed the case for trial. On the day of hearing, the DPP sought to make an opening speech but the Judge ordered him to call the first witness. Throughout the trial, the DPP had called PW1-the complainant named Baik, PW2-the investigating officer ('IO'), PW3-the bank officer and PW4-the expert to give evidence. The DPP then closed his case without calling two (2) other complainant named Mangsa & Pandai offered to the accused. Mangsa and Pandai were in fact relevant witnesses to proof the (3) charges framed against Jahat. Jahat raises a complaint to the Judge that the two (2) complainant not called or offered as a witness were very important witnesses. The DPP argued that the DPP can exclude adverse inference under s114(g) of the Evidence Act 1950 by offering the two (2) material witness to the defence and he has the discretion to choose any witnesses to support his case. The Judge agreed with the DPP and ordered both parties to make their submission

After hearing the submission by both parties, the Judge found that the prosecution has established a *prima facie* case against Jahat and called him to enter his defence. Jahat elected to give sworn statement in the witness box. After he was cross-examined by the DPP, Jahat requested to re-examine himself and to recall the IO for examination, but it was rejected by the Judge. After submission by both parties at the end of the defence case, the Judge found that Jahat had failed to raise a reasonable doubt as to his guilt and proceeded to record a conviction against him.

Advise Jahat whether the Judge has made any error of law.

(25 marks)

Continued...

QUESTION 2

a) “[40] In respect of the third issue, the counsel submitted that the chemist’s evidence is inadmissible. The chemist (SP2) gave evidence by way of a written statement (at pg. 108 of AR Vol. 1). The written statement appears at pg. 21 of AR Vol. 1. The court had acted pursuant to s.402B of the **Criminal Procedure Code (CPC)** which provides for written statements to be admissible in evidence if the parties so agree. The decision to tender the written statement of the chemist was made during the case management pursuant to s.172B of the **CPC** (see pg. 34 of AR Vol.1)

[41] Learned counsel submitted, unless there is evidence that T1 agrees to the dispensation of the chemist, the chemist report remains inadmissible. And that can only happen if the accused person signed a letter or document to the effect that he agreed to all matters agreed by both the defence and prosecution either at the pre-trial conference or case management. No such document signifying T1’s consent was produced and as such he submitted, what was agreed by his counsel did not bind T1. In support of this argument T1 relies in particular on s.172B(ii), (vi) and s.172 (6) of the **CPC**. ”

(by Zakaria Sam JCA in the case of **Viganeswaran a/l Arunasalam v Public Prosecutor and other appeals [2016] MLJU 1640**)

Analysed the quotation above in light to the pre-trial amendment of Section 402B of the Criminal Procedure Code.

(15 marks)

b) Ascertain on the high court’s powers to review its own finding of a prima facie case at the end of the Prosecution’s case.

(5 marks)

c) Discuss an aggrieved person as stated under s394 of the Criminal Procedure Code.

(5 marks)

Continued...

QUESTION 3

Ahmad, aged 35 has been charged in the Magistrates Court, Melaka under s.6 Dangerous Drugs Act 1952 for possession of 0.04g of cannabis. Unrepresented, he had pleaded guilty to the charge, understood the nature and consequences of his plea of guilty. There was no plea bargain. In his plea in mitigation before sentence, Ahmad regretted and was remorseful what he had done and promised not to repeat the offence. He has a wife who is not working and two children aged three and one to support. He is a manual labourer with an income of RM2,500.00 per month with a house still on loan which has to be repaid. He also admitted to a previous conviction for theft under s.379 of the Penal Code in 2010 for which he was sentenced to one day's imprisonment and a fine of RM2,000.00.

The Magistrate took into account of his previous conviction and had then imposed a sentence of three (3) years imprisonment and a fine of RM5,000.00

(Note: s.6 Dangerous Drugs Act 1952 liable to a fine not exceeding RM20,000.00 or to imprisonment for a term not exceeding 5 years or to both)

Ahmad who is now on bail pending appeal has engaged you as his counsel.

With reference to relevant provisions of law and case authorities, advise Ahmad on the following:-

- a) Whether the Magistrate had passed a sentence according to law and had made the proper reference to the appropriate provisions of the Criminal Procedure Code in passing the sentence on Ahmad?
(10 marks)

- b) On appeal to the High Court, based on the facts above with regard to background information, antecedent and character of the accused, analyse the factors which the appellate court would take into account for sentencing purposes?
(15 marks)

Continued...

PART B
ANSWER ONE QUESTION ONLY

QUESTION 4A

Section 26 of the Courts of Judicature Act 1964 provides that the High Court shall hear appeals from subordinate courts, the Magistrate's Courts and Sessions Court. Describe the prohibitions of appeals, requirements in appeal and the procedure up to the setting down of appeal and fixing the date of hearing at the High Court, with reference to the relevant provisions of law and case authorities. No discussion on stay of execution is needed in your answer.

(25 marks)

QUESTION 4B

'A coroner has a duty to ensure that the relevant facts (related to an inquest) are fully, fairly and fearlessly investigated.'

per Bingham LJ in R v HM Coroner for Humberside, Ex parte Jamieson (1995) QB 1 at 24

Based on the provision of s.337 of the Criminal Procedure Code, analyse the duties and powers of the Magistrate in performing his function as a coroner within the confines and limitations of the Criminal Procedure Code.

(25 marks)

End of page